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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,396	12/09/2003	Robert W. Kenny	20006.0001US01	4532
7590 06/14/2006				
WITHERS & KEYS, LLC P.O. Box 71355 Marietta, GA 30007-1355			EXAMINER LE, HUYEN D	
			ART UNIT 3751	PAPER NUMBER

DATE MAILED: 06/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/731,396	KENNY ET AL.	
	Examiner	Art Unit	
	Huyen Le	3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 March 2006.
- 2a) ☐ This action is **FINAL**.
- 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6-21, 23- 39 and 41-50 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-8, 10-21, 23-37, 39 and 41-50 is/are rejected.
- 7) ☒ Claim(s) 9, 20, 28 and 38 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 - Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 - Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some * c) ☐ None of:
 - 1. ☐ Certified copies of the priority documents have been received.
 - 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3, 4, 6, 10, 29-31, 33-35, 45, 47, 48 are rejected under 35 U.S.C. 102(b) as being anticipated by Spier (3,133,292).

The Spier reference discloses a guard panel for protecting a fixture comprising: an enclosure 33 comprising a first side (attached the bottom of the tub 12) made of a first flexible material 36 and a second side (attached to the wall 34) made of the first flexible material 36 with the first side facing away from the fixture 12 when the fixture guard panel 33 is positioned on the fixture 12; an inner layer 40 comprising padding that is disposed within the enclosure 33; and further comprising stitching (quilted crossing lines) between the enclosure 33 and the inner layer 40.

Regarding claim 3, the first side and the second side are a plastic (col. 2, line 20).

Regarding claim 4, the plastic is woven polyethylene.

Regarding claim 6, the padding 40 is foam (col. 2, line 21).

Regarding claim 10, an adhesive layer 42 is attached to the second side of the enclosure and adheres to a surface of the fixture 12 when the fixture guard panel 33 is positioned on the fixture 12.

Regarding claims 29 and 30, a junction (at the bottom edge) between the first fixture guard panel (attached to sidewall 34 of the tub 12) and the second fixture guard (attached to the bottom of the tub) to allow the first fixture guard panel and second guard panel to move relative to one another.

Regarding claim 31, the first fixture guard panel includes an adhesive layer 42 that adheres to a surface of the fixture 12 when the first fixture guard panel is positioned on the fixture.

Regarding claim 33, the flexible material 36 of the first fixture guard panel is a plastic (col. 2, line 20).

Regarding claim 34, the plastic is woven polyethylene.

Regarding claim 35, the first fixture guard panel comprises a padding layer 40 attached to the flexible material 36.

Regarding claim 45, a fixture guard system comprises a first fixture guard panel (attached to the sidewall of the tub 12) consisting of a padding layer 40 that is adjacent a first surface 34 of the fixture 12; a second fixture guard panel (attached to the bottom of the tub) that is adjacent a second surface (the bottom of the tub); and a junction (at the bottom edge) between the first fixture guard panel and second fixture guard panel to allow the first fixture guard panel and second fixture guard panel to move relative to one another.

Regarding claim 47, the second panel (the bottom portion) comprises a plastic sheet 36.

Regarding claim 48, the second panel comprises a non-slip sheet 36.

3. Claims 39, 45-47, and 49 are rejected under 35 U.S.C. 102(b) as being anticipated by DeCosta (5,085,212).

The DeCosta reference discloses a guard system comprising: a first guard panel 7 comprising a flexible material, a padding layer 10 that is disposed between a first sheet 2 and a second sheet 9, and wherein the first sheet 2 and the second sheet 9 are joined at one edge 8 to contain the padding layer 10 (Fig. 3); a second guard panel 3 comprising a flexible material; and a junction 8 between the first guard panel 7 and second guard panel 3 allowing the first guard panel 7 and second guard panel 3 to move relative to one another, wherein the junction 8 comprises a hem.

The introductory statement and all other functional statements of the intended use (of the claimed device) have been carefully considered but deemed not to impose any structural limitations on the claims distinguishable over the device of DeCosta which is capable of being used to protect a fixture.

Regarding claim 47, the second panel 3 comprises a nylon fabric 9 (a synthetic plastic material).

Regarding claim 49, the second guard panel 3 comprising a padding layer 10 disposed between the first sheet 2 and second sheet 9.

4. Claims 39, 42, 43, 45-47, 49 are rejected under 35 U.S.C. 102(b) as being anticipated by Sarno (4,037,591)

The Sarno reference discloses a guard system comprising: a first guard panel 12 comprising a flexible material, a padding layer 21 that is disposed between a first sheet 22 and a second sheet 20, and wherein the first sheet 22 and the second sheet 20 are

joined at one edge 18 to contain the padding layer 10; a second guard panel 13 comprising a flexible material; and a junction 18 (Fig. 1) between the first guard panel 12 and second guard panel 13 allowing the first guard panel 12 and second guard panel 13 to move relative to one another, wherein the junction 18 comprises a hem.

Regarding claims 42 and 47, the first sheet 22 and the second sheet 20 are plastic (vinyl).

Regarding claims 43 and 49, the second fixture guard panel 13 including a padding 21 between a first sheet 22 and a second sheet 20 and wherein the first sheet 22 and the second sheet 20 are joined at one edge 18 to contain the padding layer 21.

5. Claims 39, 41- 50 are rejected under 35 U.S.C. 102(b) as being anticipated by Sage et al (4,630,323)

The Sage et al reference discloses a guard system comprising: a first guard panel 11 comprising a flexible material, a padding layer 15 that is disposed between a first sheet and a second sheet, and wherein the first sheet and the second sheet are joined at one edge (located near 52 in Fig. 8) to contain the padding layer 15; a second guard panel 12 comprising a flexible material; and a junction 52 (Fig. 8) between the first guard panel 11 and second guard panel 12 allowing the first guard panel 11 and second guard panel 12 to move relative to one another, wherein the junction 52 comprises a hem.

Regarding claims 41, 48 and 50, the first sheet is plastic and the second sheet (top surface of panel 11) is a non-skid material.

Regarding claims 42 and 47, the first sheet and the second sheet are plastic.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 7, 8, 36, 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spier (3,133,292) in view of Smith (6,336, 231).

The Spier reference discloses a fixture guard panel for protecting a fixture as described above.

Although Spier does not disclose a valve for covering a drain opening 45, attention is directed to the Smith reference which teaches a fixture guard panel 5 comprising a flapper valve 25 (Fig. 4) for covering the drain hole and opening the hole to allow drainage when needed

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a flapper valve on the Spier fixture guard panel in view of the teaching of the Smith reference for covering the drain hole and opening the hole to allow drainage when needed. The flapper valve would include a flap 90 with a first edge (located at the bottom end of member 95) attached to a first material; and a fastener 100,105 between the second edge of the flap 90 and enclosure.

8. Claims 29-31, 35, 41, 42, 48, 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sarno (4,037,591) in view of Spier (3,133,292).

Although the Sarno reference does not disclose that the second sheet 20 is made of a non-skid material, attention is directed to the Spier reference which teaches a fixture guard made of woven polyethylene for providing non-skip properties.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the woven polyethylene on the Sarno guard panel in view of the teaching of Spier for providing non-skip properties.

Regarding claim 30, the junction 18 allows for rotation of the first fixture guard panel 12 relative to second fixture guard panel 13.

Regarding claim 31, the first fixture guard panel 12 includes an adhesive layer 45 that adheres to a surface of the fixture 50 when the first fixture guard panel 12 is positioned on the fixture 50.

Regarding claim 35, the first fixture guard panel 12 comprises a padding layer 21 attached to the flexible material.

9. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sarno (4,037,591) in view of Spier as described above and further in view of Stevens (6,353,943).

The Sarno reference discloses a fixture guard panel for protecting a fixture comprising: an enclosure 10 made of a flexible material; a padding layer 21; an adhesive layer 45 attached to the enclosure 10.

Although the Sarno reference does not teach disclose that the adhesive layer (pad) 45 is attached to the enclosure 10 by stitching, attention is directed the Stevens

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reference which teaches an adhesive layer 80 attached to the guard panel 52 by sewing (stitching).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use stitching instead of the adhesive backing material on the Sarno pad in view of the teaching of the Stevens reference for attaching the pad to the enclosure (guard panel), wherein so doing would amount a mere substitution of one functional equivalent attaching means for another within the same art that would work equally well in the Sarno guard panel.

10. Claims 1-3, 6, 10, 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sarno (4,037,591) in view of Smith et al (3,563,837).

The Sarno reference discloses a guard panel for protecting a fixture comprising: an enclosure 10 comprising a first side 20 made of a first flexible material and a second side 22 made of the first flexible material with the first side 20 facing away from the fixture 50 when the fixture guard panel is positioned on the fixture 50; an inner layer 21 comprising padding that is disposed within the enclosure 10;

Although the Sarno reference does not teach that stitching is between the enclosure and the padding 21, attention is directed to the Smith reference which teaches stitching 21 between the enclosure 11 and the padding 15 for securing and preventing the padding material in the enclosure from shifting under impact.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to providing stitches on the Sarno pad (guard panel) in view of the

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teaching of the Smith et al reference for securing and preventing the padding material in the enclosure from shifting under impact.

Regarding claim 2, the first side and the second side are hemmed together at one edge 18 to form an enclosure.

Regarding claim 3, the first side and the second side are a plastic (vinyl).

Regarding claim 6, the padding 21 is foam.

Regarding claim 10, an adhesive layer 45 is attached to the second side 22 of the enclosure and adheres to a surface of the fixture 50 when the fixture guard panel is positioned on the fixture 50.

Regarding claim 33, the flexible material of the first fixture guard panel is a plastic (vinyl).

11. Claims 4 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sarno (4,037,591) in view of Smith et al as described above and further in view of Spier (3,133,292).

Although the Sarno reference does not teach that the enclosure is made of woven polyethylene, attention is directed to the Spier reference which teaches an enclosure of a fixture guard made of woven polyethylene for providing anti-slippage properties.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the woven polyethylene on the Sarno guard panel in view of the teaching of Spier for providing anti-slippage properties.

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12. Claims 21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sarno (4,037,591) in view of Stevens (6,353,943).

The Sarno reference discloses a fixture guard panel for protecting a fixture comprising: an enclosure 10 made of a flexible material; a padding layer 21; an adhesive layer 45 attached to the enclosure 10.

Although the Sarno reference does not teach disclose that the adhesive layer (pad) 45 is attached to the enclosure 10 by stitching, attention is directed the Stevens reference which teaches an adhesive layer 80 attached to the guard panel 52 by sewing (stitching).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use stitching instead of the adhesive backing material on the Sarno pad in view of the teaching of the Stevens reference for attaching the pad to the enclosure (guard panel), wherein so doing would amount a mere substitution of one functional equivalent attaching means for another within the same art that would work equally well in the Sarno guard panel.

Regarding claim 23, the flexible material is a plastic.

13. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sarno (4,037,591) in view of Stevens as described above and further in view of Spier (3,133,292).

Although the Sarno reference does not teach that the enclosure is made of woven polyethylene, attention is directed to the Spier reference which teaches an

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enclosure of a fixture guard made of woven polyethylene for providing anti-slippage properties.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the woven polyethylene on the Sarno guard panel in view of the teaching of Spier for providing anti-slippage properties.

14. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sarno (4,037,591) in views of Stevens and Spier as described above and further in view of Smith et al (3,563,837)

Although the Sarno reference does not teach stitching between the enclosure and the padding, attention is directed to the Smith reference which teaches stitching 21 between the enclosure 11 and the padding 15 for securing and preventing the padding material in the enclosure from shifting under impact.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to providing stitches on the Sarno pad (guard panel) in view of the teaching of the Smith et al reference for securing and prevent the padding material in the enclosure from shifting under impact.

15. Claims 1, 2, 3, 6, 10, 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sage et al (4,630,323) in view of Smith et al (3,563,837).

The Sage et al reference discloses a guard panel for a fixture comprising: an enclosure 11 comprising a first side and a second side made of a flexible material 16; and an inner layer having foam padding 15 disposed within the enclosure 11.

16.

Although the Sage et al reference does not teach stitching between the enclosure 11 and the padding 15, attention is directed to the Smith et al reference which teaches stitching 21 between the enclosure 11 and the padding 15 for securing and preventing the padding material in the enclosure from shifting under impact.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to providing stitches on the Sage guard panel in view of the teaching of the Smith et al reference for securing and prevent the padding material in the enclosure from shifting under impact.

Regarding claim 2, the first side and the second side (of panel 11) are hemmed together at one edge (near 52 in Figure 8) to form an enclosure.

Regarding claims 3 and 33, the first side and the second side are a plastic.

Regarding claim 10, the guard panel comprises an adhesive layer that is attached to the second side and adheres to a surface of a fixture (see col. 3, lines 30-36).

Regarding claim 3 the first and second sides are a plastic.

17. Claims 4 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sage et al (4,630,323) in view of Smith et al as described above and further in view of Spier (3,133,292).

Although the Sage reference does not teach that the enclosure is made of woven polyethylene, attention is directed to the Spier reference which teaches an enclosure of a fixture guard made of woven polyethylene for providing anti-slippage properties.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the woven polyethylene on the Sage guard panel in view of the teaching of Spier for providing anti-slippage properties.

18. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sage et al (4,630,323) in view of Smith et al (3,563,837) as described above and further in view of Smith (6,336,231).

Although Sage et al does not disclose a valve for covering a drain opening 27, attention is directed to the Smith reference which teaches a fixture guard panel 5 comprising a flapper valve 25 (Fig. 4) for covering the drain hole and opening the hole to allow drainage when needed

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a flapper valve on the Sage et al fixture guard panel in view of the teaching of the Smith reference for covering the drain hole and opening the hole to allow drainage when needed. The flapper valve would include a flap 90 with a first edge (located at the bottom end of member 95) attached to a first material; and a fastener 100,105 between the second edge of the flap 90 and enclosure.

19. Claims 11-14, 17, 18, 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sage et al (4,630,323) in view of Smith (6,336,231).

The Sage et al reference discloses a guard panel for a fixture comprising: an enclosure 11 comprising a first sheet (top surface) and a second sheet (bottom surface) made of a flexible material 16; a padding layer 15 disposed between the first and the

second sheet (Fig. 8), wherein the first and second sheet are joined together at one edge (located near 52 in Fig. 8).

Although Sage et al does not disclose a valve for covering a drain opening 27, attention is directed to the Smith reference which teaches a fixture guard panel 5 comprising a flapper valve 25 (Fig. 4) for covering the drain hole and opening the hole to allow drainage when needed

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a flapper valve on the Sage et al fixture guard panel in view of the teaching of the Smith reference for covering the drain hole and opening the hole to allow drainage when needed. The flapper valve would include a flap 90 with a first edge (located at the bottom end of member 95) attached to a first material; and a fastener 100,105 between the second edge of the flap 90 and enclosure.

Regarding claim 12, the second sheet (bottom sheet) comprises a non-skid layer that abuts a surface of a fixture when the fixture guard panel is positioned on the fixture (see col. 3, lines 36-38).

Regarding claim 13, the first side and the second side (of panel 11) are hemmed together at one edge (near 52 in Figure 8).

Regarding claim 14, the first sheet is a plastic.

Regarding claim 17, the padding layer 15 is foam.

20. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sage et al (4,630,323) in view of Smith (6,336,231) as described above and further in view of Spier (3,133,292).

Although the Sage reference does not teach that the enclosure is made of woven polyethylene, attention is directed to the Spier reference which teaches an enclosure of a fixture guard made of woven polyethylene for providing anti-slippage properties.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the woven polyethylene on the Sage guard panel in view of the teaching of Spier for enhancing anti-slippage properties.

21. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sage et al (4,630,323) in view of Smith as described above and further in view of Smith et al (3,563,837).

Although the Sage et al reference does not teach stitching between the enclosure 11 and the padding 15, attention is directed to the Smith et al reference which teaches stitching 21 between the enclosure 11 and the padding 15 for securing and preventing the padding material in the enclosure from shifting under impact.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to providing stitches on the Sage guard panel in view of the teaching of the Smith et al reference for securing and preventing the padding material in the enclosure from shifting under impact.

22. Claims 21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sage et al (4,630,323) in view of Stevens (6,353,943).

The Sage et al reference discloses a fixture guard panel for protecting a fixture comprising: an enclosure 11 made of a flexible material 16; a padding layer 21; an adhesive layer attaching the enclosure 11 to a surface of a fixture.

Although the Sage et al reference does not disclose that the adhesive layer attached to the enclosure 10 by stitching, attention is directed the Stevens reference which teaches a fastening plate 80 attached to the guard panel 52 by sewing (stitching).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ hook and loop fasteners (attached to the panel by stitching) instead of the adhesive backing material on the Sage et al panel in view of the teaching of the Stevens reference for attaching the panel to the fixture, wherein so doing would amount a mere substitution of one functional equivalent fastening means for another within the same art that would work equally well in the Sages guard panel.

Regarding claim 23, the flexible material is a plastic.

23. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sage et al in view of Stevens as described above and further in view of Spier (3,133,292).

Although the Sage reference does not teach that the enclosure is made of woven polyethylene, attention is directed to the Spier reference which teaches an enclosure of a fixture guard made of woven polyethylene for providing anti-slippage properties.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the woven polyethylene on the Sage guard panel in view of the teaching of Spier for enhancing anti-slippage properties.

24. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sage et al in view of Stevens and Spier as described above and further in view of Smith et al (3,563,837).

Although the Sage et al reference does not teach stitching between the enclosure 11 and the padding 15, attention is directed to the Smith et al reference which teaches stitching 21 between the enclosure 11 and the padding 15 for securing and preventing the padding material in the enclosure from shifting under impact.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to providing stitches on the Sage guard panel in view of the teaching of the Smith et al reference for securing and preventing the padding material in the enclosure from shifting under impact.

25. Claims 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sage et al (4,630,323) in view of Stevens as described above and further in view of Smith (6,336,231).

Although Sage et al does not disclose a valve for covering a drain opening 27, attention is directed to the Smith reference which teaches a fixture guard panel 5 comprising a flapper valve 25 (Fig. 4) for covering the drain hole and opening the hole to allow drainage when needed.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a flapper valve on the Sage et al fixture guard panel in view of the teaching of the Smith reference for covering the drain hole and opening the hole to allow drainage when needed. The flapper valve would include a flap 90 with a first edge (located at the bottom end of member 95) attached to a first material; and a fastener 100,105 between the second edge of the flap 90 and enclosure.

26. Claims 29-31, 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sage et al (4,630,323) in view of Spier (3,133,292).

Although the Sage reference does not teach that the enclosure is made of woven polyethylene, attention is directed to the Spier reference which teaches an enclosure of a fixture guard made of woven polyethylene for providing anti-slippage properties.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the woven polyethylene on the Sage guard panel in view of the teaching of Spier for enhancing anti-slippage properties. The woven polyethylene would be a non-adhesive material.

27. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sage et al (4,630,323) in view of Spier as described above and further in view of Stevens (6,353,943).

The Sage et al reference discloses a fixture guard panel for protecting a fixture comprising: an enclosure 11 made of a flexible material 16; a padding layer 21; an adhesive layer attaching the enclosure 11 to a surface of a fixture.

Although the Sage et al reference does not disclose that the adhesive layer attached to the enclosure 10 by stitching, attention is directed the Stevens reference which teaches a fastening plate 80 attached to the guard panel 52 by sewing (stitching).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ hook and loop fasteners (attached to the panel by stitching) instead of the adhesive backing material on the Sage et al panel in view of the teaching of the Stevens reference for attaching the panel to the fixture, wherein so

doing would amount a mere substitution of one functional equivalent fastening means for another within the same art that would work equally well in the Sage et al guard panel.

28. Claims 36 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sage et al (4,630,323) in view of Spier as described above and further in view of Smith (6,336,231).

Although Sage et al does not disclose a valve for covering a drain opening 27, attention is directed to the Smith reference which teaches a fixture guard panel 5 comprising a flapper valve 25 (Fig. 4) for covering the drain hole and opening the hole to allow drainage when needed.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a flapper valve on the Sage et al fixture guard panel in view of the teaching of the Smith reference for covering the drain hole and opening the hole to allow drainage when needed. The flapper valve would include a flap 90 with a first edge (located at the bottom end of member 95) attached to a first material; and a fastener 100,105 between the second edge of the flap 90 and enclosure.

Allowable Subject Matter

29. Claims 9, 20, 28, 38 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

30. Applicant's arguments with respect to claims 1, 11, 21, 29, 39 and 45 filed on 03/27/06 have been considered but are moot in view of the new grounds of rejection.

Conclusion

31. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huyen Le whose telephone number is 571-272-4890. The examiner can normally be reached on Monday-Friday from 9:00 am to 5:00 pm.

32. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Huyen Le
Examiner
Art Unit 3751

June 9, 2006